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February 19, 2021

The Honorable Clark A. Ritchie, Chief Judge
Page County Circuit Court
116 South Court Street
Suite A
Luray, VA 22835-1200

Dear Chief Judge Ritchie,

A panel of three Justices in consultation with the Office of the Executive Secretary has approved your plans for the resumption of jury trials in the Circuit Court of Clarke County, the Circuit Court of Frederick County, and the Circuit Court of the City of Winchester. You may begin jury trials effective today, provided the jury trial is consistent with and in reasonable conformity with the plan. This approval is subject to a change in circumstances including failure to carry out the plan you have submitted.

The Supreme Court is aware that communities in Virginia are different and more importantly, courthouses are different. As we have reviewed proposed plans, our concerns were that major issues have been addressed and that users of the courthouse have knowledge of what is expected of them. An undertaking of this magnitude is likely to require changes to the plan as participants discover that some practices do not work well and need further consideration. Of course, the plans cannot be subject to significant changes every time there is a jury trial. Furthermore, the plan cannot recite the solution to every problem that may arise. We are now learning that "strict conformity" with the plan should not be expected in all of the details.

We also know that the plans will need to have some room for adjustments as we learn about how certain aspects of the plans work or don't work. This letter is not an Order. The various emergency orders forbidding jury trials until a plan is submitted to and approved by the Supreme Court are clearly orders. As we have learned, from time to time there will be deviations from strict conformity to the plan. If and when this is so, it is the presiding judge who must make the decision. If the deviation is substantial and is likely to reoccur, the locality may need to resubmit a plan for approval.

The Honorable Clark A. Ritchie, Chief Judge
February 19, 2021
Page Two

The presiding judge must and does have the authority to make decisions that must be made to effectuate a trial. Should there be changes made to the plan that have long term significance, the plan should be modified and resubmitted.

Sincerely,

A handwritten signature in blue ink, appearing to read "Donald W. Lemons". The signature is fluid and cursive, with the first name "Donald" being the most prominent part.

Donald W. Lemons

Plan for Safe Conduct of Jury Trials in Clarke County

In creating this plan, the presiding judges consulted with one another; Colin M. Greene, M.D., MPH; Lord Fairfax Health District Health Director, Meredith Davis, MPH; District Epidemiologist for the Lord Fairfax Health District; the local sheriffs; facilities managers; court reporter; departments of emergency services; attorneys; and clerks of court. The judges considered the resources and guidance provided by OES and the CDC, as well as relevant factors, including those set forth in paragraph 16 of the Supreme Court's Sixth Order Extending Declaration of Judicial Emergency in Response to Covid-19 Emergency.

I. Clarke County

A. Personal Protective Equipment

1. **Masks:** All individuals entering the courthouse will be required to have masks that cover their noses and mouths. Currently the CDC does not recommend the use of face shields as a substitute for masks. However, in limited circumstances some individuals may require a face shield such as individuals who are deaf or have another disability. If the need arises during court proceedings for an individual to use a face shield, the face shields used will comply with guidance from the CDC. This includes using face shields that curve around the wearer's face and extend below the chin or using hooded face shields as well as following CDC protocols for safely using face shields. If individuals do not have their own masks or facial shields, they will be provided by the Clarke County Fire and EMS. Anyone entering the courthouse, Rec Center, or Board of Supervisors room during the course of a jury trial will be provided with a mask if they do not already have one. If a participant uses a face shield, the face shield must comply with the guidance from the CDC found at <https://www.cdc.gov/coronavirus/2019-ncov/prevent-getting-sick/cloth-face-cover-guidance.html#face-shields>. Currently the CDC does not recommend use of face shields as a substitute for masks. However, wearing a mask may not be feasible in certain situations for some people (i.e., people who are deaf or hard of hearing). Accordingly, face shields used will be either hooded or wrap around the wearer's face and extend below the chin. Face shields will be used and disposed of if disposable, or disinfected and reused if reusable, in accordance with the CDC's guidance for the use of face shields and the manufacturer's instructions.

The default is that all persons are wearing face masks at all times. In exceptional circumstances, for a limited amount of time, and only with the Court's permission, a person may be un-masked so long as they are 10 feet or more from all other persons. Wearing masks while speaking is important to stop the spread of the COVID-19 virus. All participants will be wearing masks at all times, except in exceptional, limited circumstances.

- a. Jurors will maintain social distancing of six feet at all times. Jurors will wear masks.
 - b. Witnesses will maintain social distancing of six feet at all times. Witnesses will wear masks.
 - c. Lawyers will maintain social distancing of six feet at all times. Lawyers shall remain behind a lectern or at counsel table during the course of the trial and may not approach the bench, the jury, or the witness without leave of court for good cause shown. Lawyers will wear masks. If face coverings impair the ability of a lawyer and his client to communicate at counsel table (and alternative methods of communication such as note-writing, texting between devices, etc., are unavailable or insufficient), the Court will permit counsel whatever recesses are necessary for the purpose of facilitating private communication. The Court expects counsel to maintain social distancing with co-counsel and his or her client at all times.
 - d. The judge will maintain social distancing of six feet at all times. The judge will wear a mask throughout the course of the trial except at such times as he perceives his directions or rulings are not understood because of the mask. If the judge must remove his mask to be better understood, he will maintain 10 feet of distance between himself and others as required by VDH guidelines.
 - e. All other participants will maintain social distancing of six feet and wear a mask at all times.
2. Gloves: Exhibits will not be published individually to the jury during the trial except under special circumstances. At any time that jurors come in contact with exhibits, including after closing argument in the jury room/courtroom, jurors will be provided with disposable gloves for the handling of exhibits and be provided with specific instructions on the proper protective use of gloves. Such gloves will be provided by the Clarke County Fire and EMS Department. When possible, individual copies of exhibits will be provided to jurors or exhibits will be published by video projector. Additionally, a table may be used for physical exhibits that cannot be reproduced or duplicated. In such case, the jurors will walk one at a time up to the table to view the exhibit.

B. Sanitation Procedure

1. All touchable surfaces in the courthouse will be cleaned at least daily.
2. High-touch surfaces, including door handles, chairs, benches, tables, handrails, and elevators, will be cleaned every two hours at a minimum. High-touch surfaces include but are not limited to: witness boxes, chairs, photographs and non-paper exhibits, doors to the building, restrooms (and stalls), courtrooms and jury rooms, tables, and railings in stairwells.

C. Prescreen of Prospective Jurors

1. How the court and clerk will adapt the number of jury summonses to send out.
 - a. Juror turnout yield is usually in the ninetieth percentile. Normally thirty potential jurors are summoned for felony jury trials and twenty for misdemeanor and civil jury trials.
 - b. In order to adapt to retrieve a sufficient jury pool in light of COVID-19 concerns, for each felony jury trial, at least eighty jurors shall be summoned. For civil jury trials and misdemeanor appeals, at least thirty jurors will be summoned. The expected juror turnout yield is expected to remain in the ninetieth percentile.
2. Jurors have been summoned throughout the Period of Judicial Emergency as usual. A message has been left on the jury answering machine that specific jury trials have been cancelled. New juror notices will go out setting forth the requirements of this plan along with a prescreen questionnaire with the following Prescreening questions (hereafter referred to as the **PRESCREENING QUESTIONS**):
Have you, within the previous fourteen days:
 - a. Traveled more than 100 miles from Berryville;
 - b. Been directed to quarantine, isolate, or self-monitor;
 - c. Been diagnosed with; have had contact with anyone who has been diagnosed with COVID-19; or have personally experienced fever, cough, or shortness of breath; or
 - d. Resided with or been in close contact with any person in the above-mentioned categories?
 - e. Have you been tested for COVID-19 and are awaiting test results?
 - f. Are you currently experiencing or have you experienced in the last 14 days a fever, cough or shortness of breath that you cannot attribute to another health condition?
 - g. Within the last 14 days, have you had or do you currently have any of the following symptoms that you cannot attribute to another condition: fever or chills, cough, shortness of breath or difficulty breathing, fatigue, muscle or body aches, headache, new loss of taste or smell, sore throat, congestion or runny nose, nausea or vomiting, diarrhea?
 - h. Do you currently have a fever of 100.4 or higher that you cannot attribute to another health condition?
 - i. Have you been in close proximity to anyone experiencing any of the above listed symptoms in the last 14 days?
3. The Clerk shall call to the attention of the presiding judge the name of any juror who answers any of the foregoing questions with a positive response for possible exclusion from jury duty. Juror excuses shall be liberally granted by the presiding judge. The clerk will continue to summon jurors to make up for the resultant loss of potential jurors.
4. Age 65 or above: the Health Director notes that the majority of COVID deaths in Virginia have been of persons over the age of 65. Accordingly, in addition to notice of the provisions of Virginia Code § 8.01-341.1 that

persons over the age of 70 are statutorily exempt from jury service in all civil and criminal cases upon their request, the Clerk shall provide notice that all persons over the age of 65 will be exempt from jury service in all civil and criminal cases upon their request.

5. The Court will also exempt individuals who are in other high-risk categories or care for someone who is high-risk. Pursuant to CDC guidelines, high-risk conditions include cancer, chronic kidney disease, chronic obstructive pulmonary disease (COPD), heart conditions such as heart failure, coronary artery disease or cardiomyopathies, immunocompromised state from solid organ transplant, severe obesity, pregnancy, sickle cell disease, and type 2 diabetes mellitus. Additionally, the Court will inquire if an individual cares for someone at high-risk, lives in the same household as someone who is high-risk, if the individual is a sole caretaker, if childcare is available, if the individual interacts with high-risk persons for work and if the individual works in a long term care facility or other healthcare environment.

D. Paths of Travel, Social Distancing, Expanded Jury Room, and Remote Viewing

1. Civil and criminal jury trials will continue to be conducted in the Clarke County Circuit Court courtroom.
2. Voir dire for misdemeanor and civil jury trials will continue to be conducted in the Clarke County Circuit Court courtroom.
3. Voir dire for felony criminal trials, however, will be conducted at the Clarke County Parks and Recreation Center located approximately 1.8 miles from the courthouse at 225 Al Smith Cir., Berryville, VA.
4. At the courthouse, the jury will be seated in the jury box, which shall be expanded to include the entire southern side of the gallery to allow for social distancing. The transparent portion of the partition separating the jury box from the southern side of the gallery shall be removed. The southern and northern portions of the gallery are separated by a center aisle. During jury trials, a bailiff is posted between the two sections of the gallery.
5. For civil jury trials and misdemeanor jury trials, spectators will be seated in the northern section of the gallery. Due to the lower number of jurors and alternates in such trials (compared to felony jury trials), the jury will extend no more than two rows into the gallery. The bailiff posted between the two aisles shall be on the lookout for any attempts by spectators to communicate with the jury and immediately notify the judge of any such attempt.
6. For felony criminal jury trials, however, no spectators will be seated in the northern section of the gallery. Spectators and the media will view the proceedings remotely from the Clarke County Board of Supervisors room located at 101 Chalmers Court, Berryville, VA 22611. Everyone at the

remote viewing location will maintain six foot social distancing and wear a mask at all times. No video or audio recordings shall be made of the proceedings other than the audio recordings made by the court reporter. All protocols, including cleaning protocols, applicable to the court, will be applicable to this location. The public shall have access to voir dire at the Rec Center described below. Six foot social distancing will be maintained at all times. Jury and gallery seating will be marked off with tape to assist in social distancing.

7. In a criminal case, the victim will be seated in an appropriate location within the courtroom unless the court determines, in its discretion, pursuant to Virginia Code § 19.2-265.01 that the presence of the victim would impair the conduct of a fair trial.
8. For recesses other than luncheon and overnight recesses, the jury will retire to the jury room which shall consist of the current jury room plus the adjacent law library. Since no deliberation will be occurring, separation into two adjacent room during recesses will not be an issue. The door between the law library and the judges' chambers shall be shut during all such recesses.
9. The jury room and law library will be taped off to establish six foot social distancing. Prior to the jury's initial entry into the jury room and law library, the court will instruct the jury to maintain social distancing and to stay in the taped areas. Bailiffs will further remind the jurors during recesses.
10. Clarke County will provide a projector and screen for use in the courtroom. When possible, individual copies of exhibits will be provided to jurors or exhibits will be published by video projector. Additionally, a table may be used for physical exhibits that cannot be reproduced or duplicated. In such case, the jurors will walk one at a time up to the table to view the exhibit.
11. All jury trials are anticipated to be multi-day trials. In scheduling jury trials, counsel and the court will double any estimate they would otherwise have for the length of the trial.
12. The courtroom will be appropriately arranged for six foot social distancing at all times and so that the jury, judge, counsel, criminal defendant, civil litigants, court reporter, clerk, bailiff, and witnesses can see and hear. See diagram of Clarke County Circuit Courtroom. Recesses will occur at least every two hours for complete clean up.
13. All participants will maintain social distancing of six feet at all times.
14. No sidebars will be conducted at the bench. The jury shall retire to the jury room and law library when the judge considers any matters which would otherwise be taken up as a sidebar intended to be outside of the hearing of the jury.

15. Ample hand sanitizer will be placed throughout the courtroom, jury room, and law library.
16. Jurors will be provided multiple copies of the jury instructions at the time that the judge reads them aloud to them and for use when they deliberate.
17. Prior to the commencement of court each day, bailiffs will check the temperature of all persons entering the courthouse including the judge, and inform the judge of anyone who has a temperature of 100.4 F or greater. Such person shall be denied entry.
18. Each day of trial, the court will make the inquiry set forth in the “Prescreen of Prospective Jurors” of all persons participating in the trial using the **PRESCREENING QUESTIONS**. Please see the screening questions listed above. Any person ever answering “yes” to the **PRESCREENING QUESTIONS** or having a fever of 100.4 or above will be denied entry. If the person prohibited from entering is a necessary party or witness, the court will make accommodations through Polycom, WebEx, or continuances.
19. Jury deliberation will occur in the courtroom after all non-jurors have removed all of their personal items and cleared the courtroom. The courtroom will then be cleaned. Jurors will continue to socially distance during deliberations.
20. Should the jury have a question, the jury will retire to the jury room/law library and the court will review the question on the record in the presence of counsel and the litigants (defendant must be present in a criminal case) and the public and then call for the return of the jury to respond to the question. After the court has responded to the question in the presence of the jury, all participants, and the public, all non-jurors will again then leave the courtroom for the jury to continue its deliberation.
21. Once the court is informed that a verdict has been reached, the jury will retire to the jury room/law library and the trial participants and the public will return to the courtroom. After the court admonishes the participants regarding reactions to the verdict, the jury will return to the courtroom to pass the written verdict to the judge who will then pass it to the clerk to read aloud.
22. Filters for the air handling (HVAC) units that serve the courtroom and those that serve the Rec Center are changed quarterly by a contracted vendor.

E. Juror Check-In, Assembly, Selection, and Grouping

1. Jury selection will begin at 8:00 a.m. on the first day set for the trial. The presiding judge shall otherwise determine court hours for each day of the trial.

2. Until a jury is selected, jury check-in, assembly and voir dire for felony criminal jury trials shall take place at the Clarke County Parks and Recreation Center (the Rec Center) located approximately 1.8 miles from the courthouse at 225 Al Smith Cir, Berryville, VA. All protocols for screening, entry, face coverings, cleaning, hygiene, and social distancing for the courthouse will be enforced at this location as well.
3. Voir dire for misdemeanor and civil jury trials will continue to be conducted in the Clarke County Circuit Court courtroom.
4. Juries will include at least three alternates.
5. The Clarke County Sheriff's Office will provide weapons screening and security at the Rec Center.
6. Bailiffs will check each potential juror's temperature. The Clerk shall immediately excuse any potential juror with a temperature of 100.4 F or greater. Potential jurors will be asked the same **PRESCREENING QUESTIONS** as listed above to enter the Rec Center. The potential jurors' arrival times will be staggered to ensure social distancing. Panel members' chairs will be cleaned as new panels come in. Please see the screening questions and denial of entry listed above. All individuals entering the Rec Center will be required to have masks that cover their noses and mouths. Anyone entering the courthouse, Rec Center, or Board of Supervisors room during the course of a jury trial will be provided with a mask if they do not already have one. The rooms involved will be marked off with tape to assist in social distancing. Bailiffs and clerks will enforce social distancing. Any juror ever answering "yes" to the **PRESCREENING QUESTIONS** or having a fever of 100.4 or above will be denied entry.
7. Until a felony jury is selected, check-in for felony criminal voir dire shall take place in the Rec Center gymnasium (7050 square feet). Felony criminal voir dire will be conducted in the Rec Center Active Living Center room (2,222.5 square feet).
8. Male and female restrooms are available for the potential jurors at the Rec Center.
9. Once the jury trial has commenced, juror check-in will take place at the jury room/law library at the courthouse.
10. Potential jurors, reporting in staggered panels, will be screened at the main door of the Rec Center, following the above listed protocols, and directed first to the gym and then to the Active Living Center for voir dire. The rooms involved will be marked off with tape to assist in social distancing. Bailiffs and clerks will enforce social distancing. Upon the selection of the jury and alternates, the group will be directed to a private entrance to the courthouse and escorted to the jury room. Jurors' entrance and exit from the courtroom will thereafter be directed by the judge or bailiff. For each felony jury trial, at least eighty jurors shall be summoned. For civil jury trials and misdemeanor appeals, at least twenty jurors will be summoned.

Voir dire will be conducted in the Rec Center Active Living Center room (35' x 63.5').

11. Given the space constraints in the courtroom, witnesses will not be lined up in the courtroom for civil and misdemeanor trials during voir dire to determine if any of the potential jurors know them. Instead, for this purpose, prior to voir dire, counsel shall prepare a poster size picture or an electronic image of each witness for physical display or projector display during voir dire. This procedure may be dispensed with for misdemeanor trials with few witnesses.
12. Given the sufficient space for social distancing in the Rec Center Active Living Center room, witnesses may be briefly escorted into that room in groups of no greater than 7 at a time, during voir dire, to determine if any of the potential jurors know them. Alternatively, counsel may prepare a poster size picture or an electronic image of each witness for physical display or projector display during voir dire.
13. Clarke County will provide a projector and screen for use during voir dire at the Rec Center if necessary.
14. Jurors will wear masks at all times. The Court will however, permit individual jurors to lower face coverings briefly if requested by counsel, while ensuring proper social distancing of at least 10 feet from all other persons. . Please refer to the information on masks above.
15. Food will not be provided to jurors. Jurors may bring their lunch but may not eat their lunch in the courthouse. Jurors may leave the courthouse for luncheon recesses.
16. All activity at the courthouse and at the Rec Center will be conducted on ground level without the need of an elevator. Floor markings and signage will direct foot traffic and ensure social distancing.

F. Juror Excuse Based on COVID-19 Symptoms, Etc.

1. For potential jurors who seek to be excused prior to their appearance at court based on COVID-19 symptoms, exposure, and related health concerns, the potential juror shall provide to the Clerk a detailed request regarding their COVID-19 symptoms, exposure, and related health concerns. Such request shall include answers to the **PRESCREENING QUESTIONS** set forth in C2 above. Any person ever answering “yes” to the **PRESCREENING QUESTIONS** or having a fever of 100.4 or above will be denied entry. If the person prohibited from entering is a necessary party or witness, the court will make accommodations through Polycom, WebEx, or continuances.
2. Juror excuses shall be liberally granted by the presiding judge.

G. Procedures for Persons Developing Symptoms

1. Should someone involved in the trial or a person at the courthouse develop symptoms of Covid-19 or test positive for Covid-19. The known symptoms of Covid-19 are: Fever or chills; Cough; Shortness of breath or difficulty breathing; Fatigue; Muscle or body aches; Headache; New loss of taste or smell; Sore throat; Congestion or runny nose; Nausea or vomiting; and Diarrhea.
2. If a juror develops any of these symptoms or tests positive for Covid-19, they shall inform the bailiff, who shall immediately inform the presiding judge. The judge will immediately excuse the juror from further service on the jury. The judge shall then convene the parties outside the presence of the jury and hear any motions. The judge shall then invite the jury in and explain that the excused juror had symptoms associated with Covid-19. If a mistrial has been declared due to a now insufficient number of jurors, the jury shall be excused. If not, the jury trial will resume.
3. If a witness develops any of these symptoms or tests positive for Covid-19, they shall inform the attorney who called them, who shall immediately inform the bailiff, who shall inform the presiding judge. The judge will immediately excuse the witness from further attendance. The judge shall then convene the parties outside the presence of the jury and hear any motions. If the witness has been exposed to the courtroom, the judge will explain to all in attendance, including the jury, that an excused witness had symptoms associated with Covid-19. If a mistrial has been declared due to the now unavailability of material witness, the jury shall be excused. If not, the jury trial will resume.
4. If a clerk, court reporter, or bailiff serving in the jury trial develops any of these symptoms or tests positive for Covid-19, they shall inform the presiding judge. The judge will immediately excuse the clerk, court reporter, or bailiff from further attendance. The judge shall then convene the parties in the presence of the jury and explain that one of the court personnel had symptoms associated with Covid-19 and has been excused. Upon the replacement of the clerk, court reporter, or bailiff, the jury trial will resume.
5. If a person at the courthouse or Rec Center develops any of these symptoms or tests positive for Covid-19 but has not been exposed to anyone involved with the trial, the jury trial will continue uninterrupted.
6. If a person at the at the courthouse or Rec Center develops any of these symptoms or tests positive for Covid-19 and has been exposed to anyone involved with the trial, the judge will convene the parties outside the presence of the jury and evaluate the risk on the record and hear any motions.
7. If a lawyer or trial attending member of their staff develops any of these symptoms or tests positive for Covid-19, the lawyer shall immediately inform the bailiff, who shall inform the presiding judge. The judge will immediately excuse the lawyer or member of their staff from further

attendance. The judge shall then convene the parties outside the presence of the jury and hear any motions. The judge will explain to all in attendance, including the jury, that an excused lawyer or staff member had symptoms associated with Covid-19. If a mistrial has been declared due to the now unavailability of counsel, the jury shall be excused. If not, the jury trial will resume.

8. If the presiding judge develops any of these symptoms or tests positive for Covid-19, he shall immediately excuse himself from further attendance and notify another judge of this court. The judge so notified, or another judge designated by the chief judge of the circuit shall then convene the parties outside the presence of the jury and hear any motions. The judge shall then invite the jury in and explain that the excused judge had symptoms associated with Covid-19. If a mistrial has been declared, the jury shall be excused. If not, the jury trial will resume.
9. None of the above described events will cause the automatic shut-down of the courthouse. If the courthouse is shut down during the course of a jury trial, the judge will convene the parties by telephone or video conference, on the record, and assess the feasibility of continuing the trial at another courthouse within the circuit. The judge will hear and rule on any motions made. When notifying jurors or trial participants, the judge will not just be addressing symptomatic individuals, but individuals who have tested positive as well. With regard to notification and any rescheduling:
 - a. The Clerk will alert jurors by telephone.
 - b. The other trial participants (as well as other judges in the courthouse) will be notified within 24 hours.
 - c. The Court will ponder relevant factors such as the availability of rapid-return test results, the use of alternates, the stage of trial, the length of the delay, and the continued availability of jurors and litigants.
 - d. This plan incorporates by reference the Department of Labor and Industry's Emergency Temporary Standards, including the disinfection protocols.
 - e. If a trial participant or courthouse employee becomes ill during trial, immediate steps will be taken to isolate the person until they can safely exit the building or have them isolate if they are out of the building when they become ill. All affected areas of the building will be sealed for 24 hours if possible and a third-party vendor employed by Clarke County will clean and sanitize all affected areas. All persons who had close contact for an extended time, as defined by the CDC, will be notified of their possible exposure and urged to contact their health care provider or VDH for further instructions. The Court will consult with the litigants, remotely if necessary, to determine if a continuance or mistrial will be necessary. Among factors to be considered will be the availability of test results in a timely manner, the uses of alternates, the stage of trial, the length of the delay and the continued availability of the jurors and litigants.

This Plan will take effect thirty days following its approval by a panel of the Virginia Supreme Court and remain in effect in accordance with orders from the Supreme Court of Virginia and will not be rescinded until any such order from the Supreme Court of Virginia.